IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEALS NOS. 1173 AND 1176 OF 2001

IN

SPECIAL CIVIL APPLICATIONS NOS. 3681/01 AND 5949/88

WITH

CIVIL APPLICATIONS NOS. 11737 AND 11778 OF 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIVAN SADHNA RAJASTHAN HINDI VIDYA MANDAL

Versus

STATE OF GUJARAT

Appearance:

MR GL SANGHI Sr.Advocate with
MR HARISHANKAR, Advocate with
MR KS JHAVERI for Appellants Nos. 1-4/LPA1173/01
MR HARIN P RAVAL for Appellants Nos. 1-2/LPA1176/01
MR KAMAL TRIVEDI Addl. Advocate General with
MR VM PANCHOLI AGP for State

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 08/11/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. By a common judgment and order dated 16-10-2001 passed in Special Civil Applications Nos. 5949 of 1988 and 3681 of 2001 which are impugned in these two Letters Patent Appeals, the learned Single Judge has refused to accept the claim of the appellant, namely, Shri Jivan Sadhana Rajasthan Hindi Vidya Mandal to be a linguistic minority institution for seeking exemption from the regulatory provisions of the National Council for Teachers Education Act, 1993 and Gujarat Educational Institutions (Pre-primary and Primary Teachers Training Colleges) Rules, 1984 framed under the Gujarat Secondary Education Act in the matter of grant of admission to the students.

#. The learned Single Judge by the impugned order dated 16-10-2001 after hearing the parties at great length and after discussing the evidence produced by the institutions rejected its claim of a linguistic minority. The learned Single Judge also found that earlier the institution got recognition as linguistic minority institution by misrepresenting the facts before the concerned authorities and suppressing the genuine trust deed on which the claim was founded. The learned Single Judge therefore not only dismissed the Petitions filed by the institution, but also imposed exemplary costs of Rs. 20,000/- on the petitioners to be adjusted from the amount of grant given to them by the Government.

#. At the time of admission of these Letters Patent Appeals, learned Sr. Counsel Shri G.L. Sanghi appearing for the institution very strenuously urged that the learned Single Judge was unduly influenced and prejudiced against the petitioner by the observations and findings recorded in the order dated 19-04-1975 of the Gujarat Secondary Education Tribunal. Placing reliance on the order dated 19-04-1975 of the Tribunal, the learned Single Judge held that before the Tribunal, in the matter of acceptance of resignation of a teacher, the main question that had arisen was regarding the claim of the institution to be a linguistic minority institution. On

the basis of the evidence and material placed before the Tribunal, it held that the claim of the institution rested on a doubtful copy of the trust deed. The Tribunal in its order dated 19-04-1975 has recorded that two copies of trust deed said to have been executed by the settlor were produced before it, one obtained from the custody of the District Education Officer where it was filed earlier by the institution and the other from the Office of the Charity Commissioner. The Tribunal noted that in the two copies of the trust deed obtained from the two Governmental Authorities, there is material variation in their contents giving rise to a serious doubt on the authenticity of the contents of the trust deed and the claim of the institution to be a linguistic minority institution. Having thus held that the institution cannot claim status of linguistic minority institution, the Tribunal accepted the case of the teacher that the resignation alleged to have been tendered by him was not valid and could not be accepted. It also held that the institution cannot claim exemption from the provisions of the Rules framed under the Gujarat Secondary Education Act which required resignation by a teacher can be validly tendered only before the Competent Authority prescribed in the Rules.

#. In the view of the learned Single Judge, the order of the Tribunal dated 19-04-1975 was never challenged by the institution for all these years and suppressing the said order, recognition of the institution as linguistic minority institution was obtained from the Gujarat Secondary School Board.

#. Learned counsel appearing for the petitioner in these Appeals very strenuously urged that the learned Single Judge grossly erred in rejecting the claim of the institution as of linguistic minority on the basis of the findings and conclusions contained in the order dated 19-04-1975 of the Education Tribunal. It is submitted that that was a case concerning one of the teachers at the relevant time in the High School run by the institution and the petitioner trust was not even a party to the said case. Merely because the order of the Tribunal was not challenged by the trust, it cannot be held that the petitioner cannot set up its claim of being a linguistic minority institution.

#. On this aspect, we have looked into the relevant contents of the order of the Tribunal and the other relevant documents placed on the record before us. On caveat to oppose the prayer for interim relief, we have also heard Shri Kamal B. Trivedi, Additional Advocate

General for the State. We find that the arguments advanced in these Appeals for the petitioner institution have no force. From the title of the order of the Tribunal, it is clear that both the Manager and the Secretary, Latikaben V. Dholakia of their School, Jivan Sadhna Hindi High School were parties to the case. It is not disputed that Latikaben V. Dholakia has dual capacity as trustee of the petitioner trust and Secretary of Jivan Sadhna Hindi High School. It cannot therefore be said that the trust was not represented before the Tribunal. It also cannot be denied that the educational institution Jivan Sadhna Hindi High School is run by the petitioner trust and the dispute was concerning resignation of one of their teachers. The teacher succeeded in that case on the ground that the educational trust cannot claim the status of a minority institution and the Rules regulating procedure of tendering and accepting resignation are applicable to the institution alike others. The decision of the Tribunal thus was rendered against the claim and interest of the petitioner trust. The main issue raised by the institution was that being a minority institution, the Rules and Regulations regarding the procedure of submitting resignation were not attracted to it. That plea was rejected expressly by the Tribunal on a finding that the copies of the trust deed produced before it were not genuine. The petitioner trust thus suffered the decision rendered by the Tribunal by its order dated 19-04-1975 and never challenged the same for all these years. The order of the Tribunal therefore fully binds the educational trust and the learned Single Judge committed no error in relying on the same for coming to the conclusion on its basis amongst other evidence that the claim of the petitioner to be a linguistic minority trust of Hindi speaking people of Rajasthan is bogus and not at all substantiated either from the trust deeds or from its activities. The following observations and findings of the learned Single Judge therefore, deserve to be upheld:

> "As recorded hereinabove, except the singular statement made in the memo of petition and the Trust Deed, the petitioners have not brought any materials on the records of the matter to establish that the Trust and the college are the minority institutions. It is, however, not disputed that the College is open for admission to all eligible candidates whether belonging to the said minority or not; the college imparts PTC training alone. It has no other activity for the preservation or development of the minority culture or furtherance of Hindi language, the

education imparted in the college has no nexus whatever with the minority which the petitioners claim to belong to."

#. The learned Additional Advocate General appearing on caveat for the State read out the relevant grounds of the order dated 19-04-1975 of the Tribunal and on that basis the order of the learned Single Judge and highlighted the discrepancies in the contents of the two trust deeds i.e. one which was filed in the Office of the District Education Officer at an earlier point of time and the other obtained from the Office of the Charity Commissioner and produced before the Tribunal. In the names and description of the trustees, of which few of them are Gujaratis, an insertion is found to have been made in the copy of the trust deed relied upon. The insertion made is - after word Ahmedabad, words "they are permanently residing in Rajasthan". In the preamble of the trust deed there are insertions like "Rajasthani people speaking Hindi", "children belonging to people speaking Hindi" and such other words like "minority Rajasthani families and Hindi speaking families". The learned Single Judge has carefully gone into all the material produced in support of the claim of the petitioner trust and has come to the conclusion that majority of the trustees are Gujaratis, medium of instruction is also Gujarati. She has found nothing from the contents of the trust deed or from the information on the activities of the institution to come to the conclusion that it can legitimately claim status of a linguistic minority institution of Hindi speaking people migrated from Rajasthan to Gujarat. Reliance placed on behalf of the petitioners on decision in the case of D.A.V. College, Jullundur etc. v. The State of Punjab and others AIR 1971 SC 1737 is of little help in the absence of any reliable evidence in the present case.

#. Learned counsel laid much emphasis on a portion of the impugned judgment of the learned Single Judge in which she has made reference to a minority view expressed in the Supreme Court judgment in the case of St. Stephen's College v. The University of Delhi AIR 1992 SC 1630. The learned Judge while dealing with the decision of St. Stephen's College (supra) held :

"If any educational institution established and administered by such minority also gets the benefit of grant-in-aid out of the State funds then it has to fall in line equally with other educational institutions in the matter of admitting students in such institution and cannot

> prefer or reserve any seats for students of its own religion."

Thus observing, the learned Judge has quoted the provisions of Article 29(2) of the Constitution of India.

#. Accepting the contention advanced on behalf of the petitioner by the learned counsel that the learned Single Judge wrongly placed reliance on a minority view in St. Stephen's College (supra), in our considered opinion, since the above ground relied by the learned Single Judge is an additional ground to the main ground that there is no evidence or material to accept the claim of the institution to be one of linguistic minority, mere reference by the learned Single Judge to a minority view of the Supreme Court judgment does not render her decision vulnerable in these Letters Patent Appeals. Her view against the question of the claim of the institution as one belonging to a linguistic minority is not found to be erroneous.

##. The second ground urged on behalf of the petitioner institution is that the educational authorities and the Gujarat Secondary Education Board have from time to time recognised the petitioner institution as one of a linguistic minority. This fact is apparent from the communications of recognition received as back as on 23-08-1988, 01-12-1998 and lastly on 10-03-1999. On the basis of the above communications of recognition, the submission made on behalf of the petitioner trust is that the respondent authorities are now estopped on the principle of promissory estoppel from de-recognising the institution as of linguistic minority.

##. The claim based on the above communications of recognition of the institution has been successfully met by the respondents by an additional affidavit filed by Shri Gangaram R. Patel, Secretary, Gujarat Secondary Education Board, who had issued the communication dated 01-12-1998 at the relevant time. In his affidavit, he has explained that at that time he had relied upon the earlier order of his predecessor dated 8-10-1991. He has also stated that in support of their claim of minority institution, one earlier order of the Tribunal on Application No. 231 of 1974 with 294 of 1974 passed on 17-01-1975 was produced and relied. But the subsequent order of the Tribunal rescinding the same passed by the Tribunal on 19-04-1975 (discussed above) was suppressed in which on the basis of evidence and material produced by the institution, its claim for status as minority institution was clearly rejected. It is thus

satisfactorily explained that the various communications recognising the institution as minority linguistic institution were obtained by the institution by misrepresentation and suppression of material, orders and documents. Such communications, therefore, issued in favour of the petitioner in the past have rightly not been given any importance by the learned Single Judge and we are in agreement with the view expressed in that regard.

##. Religious and linguistic minority institutions are given protection by the Constitution by twin Articles 29 and 30 which are to be interpreted and applied harmoniously with each other. While Article 29(1) gives a cultural or linguistic minority community the right to conserve its language or culture, Article 30(1) confers on religious or linguistic minorities the right to establish educational institutions of their own choice, for, it is through the education of the people that the group culture can be maintained. The petitioner has miserably failed before the Tribunal as also before the learned Single Judge to produce any evidence and material in the shape of genuine trust deed and details of its activities to substantiate its claim of being a linguistic minority institution set up to conserve the culture of Rajasthani Hindi speaking people based in Gujarat. As has been found, neither from the trust deed nor from the activities of the institution, it can claim any such status of a linguistic minority institution

##. For the aforesaid reasons, agreeing with the view expressed by the learned Single Judge, we find no ground to entertain these Letters Patent Appeals. They are accordingly dismissed.

The Civil Applications shall also stand disposed of accordingly.

In the circumstances, there shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J.)

[sndevu]

After pronouncement of the judgment, request is made by the learned counsel for the appellant for

continuance of stay which is stated to have operated upto 30-10-2001 for some more time. This request, for the reasons recorded in the judgment pronounced today, cannot be accepted and the same is declined.

(D.M. DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J.)